

Proposed Amendments From the Real Property Section of the NC Bar Association:

Staff Note: These proposed amendments are presented at the request of Senator Edwards, on behalf of the Real Property Section of the NC Bar Association. They are based on a document provided by the Real Property Section, with some changes to the order in which they are organized. These amendments include both technical and substantive changes. The requested effective date is October 1, 2021.

Stars designate items requested by the Real Property Section and arrows designate clean-up changes proposed by staff. Quoted language in the explanation following each amendment comes from the Real Property Section's document.

PART I. AMENDMENTS AFFECTING THE VALIDITY OF NOTARIAL ACTS

Amendment Group #1- Update to statutory dates upon which certain notarial acts are deemed valid, despite defects:

SECTION #.(a) G.S. 10B-65 reads as rewritten:

"§ 10B-65. Acts of notaries public in certain instances validated.

(a) Any acknowledgment taken and any instrument notarized by a person prior to qualification as a notary public but after commissioning or recommissioning as a notary public, or by a person whose notary commission has expired, is ~~hereby~~ validated. The acknowledgment and instrument ~~shall have~~ have the same legal effect as if the person qualified as a notary public at the time the person performed the act.

(b) All documents bearing a notarial seal and ~~which that~~ contain any of the following errors are validated and given the same legal effect as if the errors had not occurred:

- (1) The date of the expiration of the notary's commission is stated, whether correctly or erroneously.
- (2) The notarial seal does not contain a readable impression of the notary's name, contains an incorrect spelling of the notary's name, or does not bear the name of the notary exactly as it appears on the commission, as required under G.S. 10B-37.
- (3) The notary's signature does not comport exactly with the name on the notary commission or on the notary seal, as required by G.S. 10B-20.
- (4) The notarial seal contains typed, printed, drawn, or handwritten material added to the seal, fails to contain the words "North Carolina" or the abbreviation "NC", or contains correct information except that instead of the abbreviation for North Carolina contains the abbreviation for another state.
- (5) The date of the acknowledgement, the verification or proof, or the oath or affirmation states the correct day and month but lacks a year or states an incorrect year.

(c) All deeds of trust in which the notary was named in the document as a trustee only are validated.

(d) All notary acknowledgments performed before ~~December 1, 2005~~, July 1, 2013, bearing a notarial seal are ~~hereby~~ validated.

(e) This section applies to notarial acts performed on or before April 1, ~~2013~~, 2021.
(1945, c. 665; 1947, c. 313; 1949, c. 1; 1953, c. 702; 1961, cc. 483, 734; 1965, c. 37; 1969, c. 83; c. 716, s. 1; 1971, c. 229, s. 1; 1973, c. 680, s. 1; 1977, c. 734, s. 1; 1979, c. 226, s. 2; c. 643,

s. 1; 1981, c. 164, ss. 1, 2; 1983, c. 205, s. 1; 1985, c. 71, s. 1; 1987, c. 277, s. 9; 1989, c. 390, s. 9; 1991, c. 683, s. 2; 1997-19, s. 1; 1997-469, s. 2; 1998-228, s. 10; 1999-21, s. 2; 2001-154, s. 1; 2002-159, s. 27; 2003-38, s. 1; 2004-199, s. 6.; 2005-391, s. 4; 2008-194, s. 5; 2013-204, s. 1.5.)

SECTION #.(b) G.S. 10B-69 reads as rewritten:

"§ 10B-69. Official forms cured.

(a) The notarial certificate contained in a form issued by a State agency prior to April 1, ~~2013, 2021~~, is deemed to be a valid certificate ~~provided so long as~~ the certificate complied with the law at the time the form was issued.

(b) The notarization using a certificate under subsection (a) of this section ~~shall be~~ is deemed valid if executed in compliance with the law at the time the form was issued." (2006-59, s. 24; 2013-204, s. 1.8.)

SECTION #.(c) G.S. 10B-71 reads as rewritten:

"§ 10B-71. Certain notarial acts validated when recommissioned notary failed to again take oath.

Any acknowledgment taken and any instrument notarized by a person who after recommissioning failed to again take the oath as a notary public is ~~hereby~~ validated. The acknowledgment and instrument ~~shall~~ have the same legal effect as if the person qualified as a notary public at the time the person performed the act. This section ~~shall apply~~ applies to notarial acts performed on or after May 15, 2004, and before April 1, ~~2013, 2021~~." (2009-358, s. 1; 2013-204, s. 1.9.)

SECTION #.(d) G.S. 47-48 reads as rewritten:

"§ 47-48. Clerks' and registers of deeds' certificate failing to pass on all prior certificates.

When it appears that the clerk of the superior court, register of deeds, or other officer having the power to probate or certify deeds, in passing upon deeds or other ~~instruments, instruments~~ and ~~the related certificates thereto, having consisting of~~ more than one certificate of the same or a different date, ~~by date by~~ other officer or officers taking acknowledgment or probating the ~~same, certificates,~~ has in his or her certificate or order mentioned only one or more of the preceding or foregoing certificates or orders, but not all of them, but has admitted the same deed or other instrument to probate or recordation, it ~~shall be~~ is conclusively presumed that all the certificates of ~~said the~~ deed or instrument necessary to the admission of same to for probate or recordation have been passed upon, and the certificate of ~~said the~~ clerk, register of deeds, or other probating or certifying officer ~~shall be~~ is deemed sufficient and the probate, ~~certification certification,~~ and recordation of ~~said the~~ deed or instrument is ~~hereby made and declared~~ valid for all intents and purposes. ~~The provisions of this~~ This section ~~shall apply~~ applies to all instruments recorded in any county of this State prior to April 1, ~~2013, 2021~~." (1917, c. 237; C.S., s. 3330; 1945, c. 808, s. 1; 1965, c. 1001; 1971, c. 11; 1973, c. 1402; 1987, c. 360, s. 2; 2013-204, s. 1.18.)

SECTION #.(e) G.S. 47-51 reads as rewritten:

"§ 47-51. Official deeds omitting seals.

All deeds executed prior to April 1, ~~2013, 2021~~, by any sheriff, commissioner, receiver, executor, executrix, administrator, administratrix, or other officer authorized to execute a deed by virtue of his office or appointment, in which the officer has omitted to affix ~~his a~~ seal after ~~his the~~ officer's signature, ~~shall be~~ are not be invalid on account of the omission of ~~such the~~ seal." (1907, c. 807; 1917, c. 69, s. 1; C.S., s. 3333; Ex. Sess. 1924, c. 64; 1941, c. 13; 1955, c. 467, ss. 1, 2; 1959, c. 408; 1971, c. 14; 1973, c. 1207, s. 1; 1983, c. 398, s. 2; 1985, c. 70, s. 2; 1987, c. 277, s. 2; 1989, c. 390, s. 2; 1991, c. 489, s. 2; 2013-204, s. 1.21.)

SECTION #.(f) G.S. 47-53 reads as rewritten:**"§ 47-53. Probates omitting official seals, etc.**

~~In all cases where~~ If the acknowledgment, private examination, or other proof of the execution of any deed, mortgage, or other instrument authorized or required to be registered has been taken ~~or had by~~ or before any commissioner of affidavits and deeds of this State, ~~or clerk or deputy clerk~~ of a court of record, or notary public of this or any other state, territory, or district, and ~~such the~~ deed, mortgage, or other instrument has ~~heretofore~~ been recorded in any county in this State, but ~~such the~~ commissioner, clerk, deputy clerk, or notary public ~~has omitted~~ to attach his or her official or notarial seal ~~thereto, seal to it,~~ or if omitted, to insert his or her name in the body of the certificate, or if omitted, to sign his or her name to ~~such the~~ certificate, if the name of ~~such the~~ officer appears in the body of ~~said the~~ certificate or is signed ~~thereto, to it,~~ or it does not appear of record that ~~such the~~ seal was attached to the original deed, mortgage, or other instrument, or ~~such the~~ commissioner, clerk, deputy clerk, or notary public has certified the ~~same certificate~~ as under his or her "official seal," or "notarial seal," or words of similar import, and no such seal appears of record or where the officer uses "notarial" in his or her certificate and signature shows that "C.S.C.," or "clerk of superior court," or similar exchange of capacity, and the word "seal" follows the signature, then all such acknowledgments, private examinations or other proofs of such deeds, mortgages, or other instruments, and ~~the their registration thereof, are hereby made~~ are in all respects valid and binding. ~~The provisions of this~~ This section ~~apply applies~~ to acknowledgments, private examinations, or proofs taken prior to April 1, 2013. ~~Provided, this~~ 2021. This section does not apply to pending litigation."

(Rev., s. 1012; 1907, cc. 213, 665, 971; 1911, c. 4; 1915, c. 36; C.S., s. 3334; 1929, c. 8, s. 1; 1945, c. 808, s. 2; 1951, c. 1151, s. 1; 1965, c. 500; 1983, c. 398, s. 3; 1985, c. 70, s. 3; 1987, c. 277, s. 3; 1989, c. 390, s. 3; 1991, c. 489, s. 3; 2013-204, s. 1.22.)

SECTION #.(g) G.S. 47-53.1 reads as rewritten:**"§ 47-53.1. Acknowledgment omitting seal of clerk or notary public.**

~~Where~~ If any person has taken an acknowledgment as either a notary public or a clerk of a superior court, deputy clerk of a superior court, or assistant clerk of a superior court and has failed to affix his or her seal and this acknowledgment has been otherwise duly probated and ~~recorded~~ recorded, then this acknowledgment is ~~hereby declared to be~~ sufficient and valid. This section applies only to those deeds and other instruments acknowledged prior to April 1, 2013-2021."

(1951, c. 1151, s. 1A; 1953, c. 1307; 1963, c. 412; 1975, c. 878; 1983, c. 398, s. 4; 1985, c. 70, s. 4; 1987, c. 277, s. 4; 1989, c. 390, s. 4; 1991, c. 489, s. 4; 2004-199, s. 18; 2013-204, s. 1.23.)

SECTION #.(h) G.S. 47-72 reads as rewritten:**"§ 47-72. Corporate name not affixed, but signed otherwise prior to April 1, 2013-2021.**

In all cases prior to April 1, 2013-2021, where any deed conveying lands purported to be executed by a corporation, but the corporate name was in fact not affixed to ~~said the~~ deed, but ~~same the deed~~ was signed by the president and secretary of ~~said the~~ corporation, or by the president and two members of the governing body of ~~said the~~ corporation, and ~~said the~~ deed has been registered in the county where the land conveyed by ~~said the~~ deed is located, ~~said the defective execution above described shall be and the same is hereby declared to be~~ is in all respects valid, and ~~such the~~ deed ~~shall be is~~ deemed to be in all respects the deed of ~~said the~~ corporation."

(1919, c. 53, s. 1; C.S., s. 3354; 1927, c. 126; 1963, c. 1094; 1973, c. 118, s. 1; 2013-204, s. 1.26.)

SECTION #.(i) G.S. 47-97 reads as rewritten:**"§ 47-97. Validation of corporate deed with mistake as to officer's name.**

★ In all cases where the deed of a corporation executed before April 1, ~~2013, 2021~~, is properly executed, properly recorded and there is error in the probate of ~~said the~~ corporation's deed as to the name or names of the officers in ~~said the~~ probate, ~~said the deed shall be construed to be a deed of~~ has the same force and effect as if ~~said the~~ probate were in every way proper." (1933, c. 412, s. 1; 2013-204, s. 1.32.)

SECTION #.(j) G.S. 47-97.1 reads as rewritten:

"§ 47-97.1. Validation of corporate deeds containing error in acknowledgment or probate.

★ In all cases where the deed of a corporation executed and filed for registration prior to April 1, ~~2013, 2021~~, is properly executed and properly ~~recorded~~ recorded, and there is error in the acknowledgment or probate of ~~said the~~ corporation's deed as to the name or names of the officer or officers named ~~therein~~ and error as to the title or titles of the officer or officers ~~named therein,~~ ~~said deed shall be construed to be a deed of~~ named, the deed has the same force and effect as if ~~said the~~ probate or acknowledgment were in every way proper." (1951, c. 825; 2013-204, s. 1.33.)

SECTION #.(k) G.S. 47-108.6 reads as rewritten:

"§ 47-108.6. Validation of certain conveyances of foreign dissolved corporations.

★ In all cases when, prior to April 1, ~~2013, 2021~~, any dissolved foreign corporation has, prior to its dissolution, by deed of conveyance purported to convey real property in this State, and ~~said the~~ instrument recites a consideration, is signed by the proper officers in the name of ~~said the~~ corporation, sealed with the corporate seal and duly registered in the office of the register of deeds of the county where the land described in ~~said the~~ instrument is located, but there is error in the attestation clause and acknowledgment in failing to identify the officers signing ~~said the~~ deed and to recite that authority was duly given and that ~~the same~~ it was the act of ~~said the~~ corporation, ~~said the deed shall be construed to be a deed of~~ deed has the same force and effect as if ~~said the~~ attestation clause and acknowledgment were in every way proper." (1949, c. 1212; 2013-204, s. 1.35.)

SECTION #.(l) G.S. 47-108.11 reads as rewritten:

"§ 47-108.11. Validation of recorded instruments where seals have been omitted.

→ In all cases of any deed, deed of trust, mortgage, ~~lien-lien~~, or other instrument authorized or required to be registered in the office of the register of deeds of any county in this ~~State~~ State, where it appears of record or it appears that from ~~said instrument,~~ the instrument, as recorded in the office of the register of deeds of any county in the State, that there has been omitted from ~~said the~~ recorded or registered instrument the word "~~seal,~~" "seal" or "notarial seal" and that any of ~~said the~~ recorded or registered instruments shows or recites that the grantor or grantors "have hereunto fixed or set their hands and seals" and the signature of the grantor or grantors appears without a seal thereafter or on the recorded or registered instrument or in all cases where it appears there is an attesting clause ~~which that~~ recites "signed, sealed and delivered in the presence of," and the signature of the grantor or grantors appears on the recorded or registered instrument without any seal appearing thereafter or of record, then all such deeds, mortgages, deeds of trust, ~~liens~~ liens, or other instruments, and ~~the their registration of same~~ in the office of the register of deeds, ~~are hereby declared to be~~ in all respects valid and binding and ~~are hereby made~~ in all respects valid and binding to the same extent as if the word "seal" or "notarial seal" had not been omitted, and the registration and recording of ~~such the~~ instruments in the office of the register of deeds in any county in this State are ~~hereby declared to be~~ valid, proper, legal legal, and binding registrations.

→ This section ~~shall~~does not apply in any respect to any instrument recorded or registered subsequent to April 1, ~~2013, 2021~~, or to pending litigation or to any ~~such~~ instruments now directly or indirectly involved in pending litigation."

(1953, c. 996; 1959, c. 1022; 1973, c. 519; c. 1207, s. 2; 1977, c. 165; 1979, 2nd Sess., c. 1185, s. 1; 1983, c. 398, s. 7; 1985, c. 70, s. 7; 1987, c. 277, s. 7; 1989, c. 390, s. 7; 1991, c. 489, s. 7; 1995, c. 163, s. 16; 1999-456, s. 12; 2013-204, s. 1.36.)

SECTION #.(m) G.S. 47-108.20 reads as rewritten:

★ **"§ 47-108.20. Validation of certain recorded instruments that were not acknowledged.**

→ All instruments recorded before April 1, ~~2013, 2021~~, that were not reexecuted and reacknowledged and that correct an obvious typographical or other minor error in a recorded instrument that was previously properly executed and acknowledged are ~~declared to be valid~~ instruments." (1985 (Reg. Sess., 1986), c. 842, s. 2; 2013-204, s. 1.38.)

Explanation: Each of the statutes included in this amendment group was last updated in Part 1 of S.L. 2013-204. With the exception of the first date change in G.S. 10B-65(d), S.L. 2013-204 changed each curative date to April 1, 2013. Prior to S.L. 2013-204, curative dates were not uniform. The first date change amendment to G.S. 10B-65(d) would validate all notary acknowledgments bearing a seal if performed before July 1, 2013. Each other statute amended here would, for the grounds described in the statute, validate instruments or actions prior to April 1, 2021.

Chapter 10B is the Notaries chapter of the General Statutes and the statutes included here are in Part 9 (Validation of Notary Acts) of Article 1 (The Notary Public Act). Chapter 47 is the Probate and Registration chapter and each of the statutes included here are in Article 4 (Curative Statutes; Acknowledgements; Probates; Registration).

Background:

GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2013

SESSION LAW 2013-204 HOUSE BILL 332

AN ACT MAKING CORRECTIONS AND OTHER AMENDMENTS TO THE NOTARY PUBLIC ACT, MAKING OTHER CONFORMING CHANGES, AND PROVIDING FOR AN ALTERNATIVE PROCEDURE FOR SATISFACTION OF SECURITY INSTRUMENTS.

The General Assembly of North Carolina enacts:

PART I. NOTARY PUBLIC ACT

...

SECTION 1.5. G.S. 10B-65 reads as rewritten:

"§ 10B-65. Acts of notaries public in certain instances validated.

...

(b) All documents bearing a notarial seal and which contain any of the following errors are validated and given the same legal effect as if the errors had not occurred:

...

- (5) The date of the acknowledgement, the verification or proof, or the oath or affirmation states the correct day and month but lacks a year or states an incorrect year.

...
(d) All notary acknowledgments performed before ~~January 1, 1953;~~ December 1, 2005, bearing a notarial seal are hereby validated.

(e) This section applies to notarial acts performed on or before ~~May 1, 2008;~~ April 1, 2013."

...

SECTION 1.8. G.S. 10B-69 reads as rewritten:

"§ 10B-69. Official forms cured.

(a) The notarial certificate contained in a form issued by a State agency prior to ~~October 1, 2006;~~ April 1, 2013, is deemed to be a valid certificate provided the certificate complied with the law at the time the form was issued.

...."

SECTION 1.9. G.S. 10B-71 reads as rewritten:

"§ 10B-71. Certain notarial acts validated when recommissioned notary failed to again take oath.

Any acknowledgment taken and any instrument notarized by a person who after recommissioning failed to again take the oath as a notary public is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act. This section shall apply to notarial acts performed on or after May 15, 2004, and before ~~July 8, 2009;~~ April 1, 2013."

...

SECTION 1.12. G.S. 47-2.2 reads as rewritten:

"§ 47-2.2. Notary public of sister state; lack of seal or stamp or expiration date of commission.

(a) If the proof or acknowledgment of any instrument is had before a notary public of any state other than North Carolina and the instrument does ~~not~~ not (i) show the seal or stamp of the notary ~~public~~ public, (ii) provide evidence pursuant to subsection (b) of this section that a seal or stamp is not required and the expiration date of the commission of the notary ~~public~~ public, or (iii) state that the notary's commission does not expire or is a lifetime appointment, the certificate of proof or acknowledgment made by such notary public shall be accompanied by the certificate of the county official before whom the notary qualifies for ~~office~~ office or of a state officer authorized to issue certificates regarding notary commission status, stating that such notary public was at the time his certificate bears date an acting notary public of such state, and that such notary's genuine signature is set to his certificate. The certificate of the official herein provided for shall be under his hand and official seal.

(b) A proof or acknowledgement which does not require a seal or stamp of the notary to be effective in the jurisdiction issuing the notary's commission shall include either (i) a statement by the notary within the proof or acknowledgement area of the instrument that the notary is not required to utilize a seal or stamp or (ii) a reference that purports to be the statute of the commissioning state which provides that no seal or stamp is required together with a statement that the notary is not required to utilize a seal or stamp. The register of deeds may rely upon this statement and is not responsible for confirming its validity or the authority of the person making it. A register of deeds may not refuse to accept a record for registration because a notarial seal or stamp is omitted from the proof or acknowledgement if the provisions of this subsection have been complied with in the proof or acknowledgement. The acceptance of a record for registration under this subsection shall give rise to a presumption that the seal or stamp was not required to be affixed by the notary. This presumption is rebuttable and shall apply to all instruments whenever recorded. However, a court order finding the lack of a valid seal shall not affect the rights of a person who (i) records an interest in the real property described in the instrument before the finding of a lack of a valid seal and (ii) would otherwise have an enforceable interest in the real property."

...

SECTION 1.18. G.S. 47-48 reads as rewritten:

"§ 47-48. Clerks' and registers of deeds' certificate failing to pass on all prior certificates.

When it appears that the clerk of the superior court, register of deeds, or other officer having the power to probate or certify deeds, in passing upon deeds or other instruments, and the certificates thereto, having more than one certificate of the same or a different date, by other officer or officers taking acknowledgment or probating the same, has in his certificate or order mentioned only one or more of the preceding or foregoing certificates or orders, but not all of them, but has admitted the same deed or other instrument to probate or recordation, it shall be conclusively presumed that all the certificates of said deed or instrument necessary to the admission of same to probate or recordation have been passed upon, and the certificate of said clerk, register of deeds, or other probating or certifying officer shall be deemed sufficient and the probate, certification and recordation of said deed or instrument is hereby made and declared valid for all intents and purposes. The provisions of this section shall apply to all instruments recorded in any county of this State prior to ~~April 1, 1980~~ April 1, 2013."

...

SECTION 1.21. G.S. 47-51 reads as rewritten:

"§ 47-51. Official deeds omitting seals.

All deeds executed prior to ~~January 1, 1991~~ April 1, 2013, by any sheriff, commissioner, receiver, executor, executrix, administrator, administratrix, or other officer authorized to execute a deed by virtue of his office or appointment, in which the officer has omitted to affix his seal after his signature, shall not be invalid on account of the omission of such seal."

SECTION 1.22. G.S. 47-53 reads as rewritten:

"§ 47-53. Probates omitting official seals, etc.

In all cases where the acknowledgment, private examination, or other proof of the execution of any deed, mortgage, or other instrument authorized or required to be registered has been taken or had by or before any commissioner of affidavits and deeds of this State, or clerk or deputy clerk of a court of record, or notary public of this or any other state, territory, or district, and such deed, mortgage, or other instrument has heretofore been recorded in any county in this State, but such commissioner, clerk, deputy clerk, or notary public has omitted to attach his or her official or notarial seal thereto, or if omitted, to insert his or her name in the body of the certificate, or if omitted, to sign his or her name to such certificate, if the name of such officer appears in the body of said certificate or is signed thereto, or it does not appear of record that such seal was attached to the original deed, mortgage, or other instrument, or such commissioner, clerk, deputy clerk, or notary public has certified the same as under his or her "official seal," or "notarial seal," or words of similar import, and no such seal appears of record or where the officer uses "notarial" in his or her certificate and signature shows that "C.S.C.," or "clerk of superior court," or similar exchange of capacity, and the word "seal" follows the signature, then all such acknowledgments, private examinations or other proofs of such deeds, mortgages, or other instruments, and the registration thereof, are hereby made in all respects valid and binding. The provisions of this section apply to acknowledgments, private examinations, or proofs taken prior to ~~January 1, 1991~~ April 1, 2013. Provided, this section does not apply to pending litigation."

SECTION 1.23. G.S. 47-53.1 reads as rewritten:

"§ 47-53.1. Acknowledgment omitting seal of clerk or notary public.

Where any person has taken an acknowledgment as either a notary public or a clerk of a superior court, deputy clerk of a superior court, or assistant clerk of a superior court and has failed to affix his or her seal and this acknowledgment has been otherwise duly probated and recorded then this acknowledgment is hereby declared to be sufficient and valid. This section applies only to those deeds and other instruments acknowledged prior to ~~January 1, 1991~~ April 1, 2013."

...

SECTION 1.26. G.S. 47-72 reads as rewritten:

"§ 47-72. Corporate name not affixed, but signed otherwise prior to ~~January, 1973~~ April 1, 2013.

In all cases prior to ~~the first day of January, 1973~~ April 1, 2013, where any deed conveying lands purported to be executed by a corporation, but the corporate name was in fact not affixed to said deed, but same was signed by the president and secretary of said corporation, or by the

president and two members of the governing body of said corporation, and said deed has been registered in the county where the land conveyed by said deed is located, said defective execution above described shall be and the same is hereby declared to be in all respects valid, and such deed shall be deemed to be in all respects the deed of said corporation."

...

SECTION 1.32. G.S. 47-97 reads as rewritten:

"§ 47-97. Validation of corporate deed with mistake as to officer's name.

In all cases where the deed of a corporation executed before ~~the first day of January, 1918, April 1, 2013,~~ is properly executed, properly recorded and there is error in the probate of said corporation's deed as to the name or names of the officers in said probate, said deed shall be construed to be a deed of the same force and effect as if said probate were in every way proper."

SECTION 1.33. G.S. 47-97.1 reads as rewritten:

"§ 47-97.1. Validation of corporate deeds containing error in acknowledgment or probate.

In all cases where the deed of a corporation executed and filed for registration prior to ~~the fifteenth day of June, 1947, April 1, 2013,~~ is properly executed and properly recorded and there is error in the acknowledgment or probate of said corporation's deed as to the name or names of the officer or officers named therein and error as to the title or titles of the officer or officers named therein, said deed shall be construed to be a deed of the same force and effect as if said probate or acknowledgment were in every way proper."

...

SECTION 1.35. G.S. 47-108.6 reads as rewritten:

"§ 47-108.6. Validation of certain conveyances of foreign dissolved corporations.

In all cases when, prior to ~~the first day of January, 1947, April 1, 2013,~~ any dissolved foreign corporation has, prior to its dissolution, by deed of conveyance purported to convey real property in this State, and said instrument recites a consideration, is signed by the proper officers in the name of said corporation, sealed with the corporate seal and duly registered in the office of the register of deeds of the county where the land described in said instrument is located, but there is error in the attestation clause and acknowledgment in failing to identify the officers signing said deed and to recite that authority was duly given and that the same was the act of said corporation, said deed shall be construed to be a deed of the same force and effect as if said attestation clause and acknowledgment were in every way proper."

SECTION 1.36. G.S. 47-108.11 reads as rewritten:

"§ 47-108.11. Validation of recorded instruments where seals have been omitted.

In all cases of any deed, deed of trust, mortgage, lien or other instrument authorized or required to be registered in the office of the register of deeds of any county in this State where it appears of record or it appears that from said instrument, as recorded in the office of the register of deeds of any county in the State, there has been omitted from said recorded or registered instrument the word "seal," "notarial seal" and that any of said recorded or registered instruments shows or recites that the grantor or grantors "have hereunto fixed or set their hands and seals" and the signature of the grantor or grantors appears without a seal thereafter or on the recorded or registered instrument or in all cases where it appears there is an attesting clause which recites "signed, sealed and delivered in the presence of," and the signature of the grantor or grantors appears on the recorded or registered instrument without any seal appearing thereafter or of record, then all such deeds, mortgages, deeds of trust, liens or other instruments, and the registration of same in the office of the register of deeds, are hereby declared to be in all respects valid and binding and are hereby made in all respects valid and binding to the same extent as if the word "seal" or "notarial seal" had not been omitted, and the registration and recording of such instruments in the office of the register of deeds in any county in this State are hereby declared to be valid, proper, legal and binding registrations.

This section shall not apply in any respect to any instrument recorded or registered subsequent to ~~January 1, 1999-April 1, 2013,~~ or to pending litigation or to any such instruments now directly or indirectly involved in pending litigation."

...

SECTION 1.38. G.S. 47-108.20 reads as rewritten:

"§ 47-108.20. Validation of certain recorded instruments that were not acknowledged.

All instruments recorded before ~~June 30, 1986~~, April 1, 2013, that were not reexecuted and reacknowledged and that correct an obvious typographical or other minor error in a recorded instrument that was previously properly executed and acknowledged are declared to be valid instruments."

...
PART III. EFFECTIVE DATE

SECTION 3. Section 1 of this act becomes effective July 1, 2013. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of June, 2013.

s/ Tom Apodaca
Presiding Officer of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 4:36 p.m. this 26th day of June, 2013

Amendment #2

SECTION #. G.S. 10B-72 is repealed.

Explanation: Section 1 of S.L. 2009-358 enacted G.S. 10B-71. Section 65 of S.L. 2012-194 enacted G.S. 10B-72, with identical language to G.S. 10B-71, other than the dates. Section 1.9 of S.L. 2013-204 (included with background from the prior amendment grouping) amended the dates in G.S. 10B-71 to encompass the dates covered by G.S. 10B-72, making G.S. 10B-72 obsolete. This amendment is requested to repeal G.S. 10B-72. Note: G.S. 10B-71 is amended in the amendment group prior.

Background:

§ 10B-71. Certain notarial acts validated when recommissioned notary failed to again take oath.

Any acknowledgment taken and any instrument notarized by a person who after recommissioning failed to again take the oath as a notary public is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act. This section shall apply to notarial acts performed on or after May 15, 2004, and before April 1, 2013. (2009-358, s. 1; 2013-204, s. 1.9.)

§ 10B-72. Certain notarial acts validated when recommissioned notary failed to again take oath.

Any acknowledgment taken and any instrument notarized by a person who after recommissioning failed to again take the oath as a notary public is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act. This section shall apply to notarial acts performed on or after August 28, 2010, and before January 12, 2012. (2012-194, s. 65.)

Amendment #3

SECTION #. G.S. 47-2.2 reads as rewritten:

"§ 47-2.2. Notary public of sister state; lack of seal or stamp or expiration date of commission.

(a) If the proof or acknowledgment of any instrument is had before a notary public of any state other than North Carolina and the instrument does not (i) show the seal or stamp of the notary public, (ii) provide evidence pursuant to subsection (b) of this section that a seal or stamp is not required and the expiration date of the commission of the notary public, or (iii) state-state, as part of the proof or acknowledgement or as part of the notary's seal, that the notary's commission does not expire or is a lifetime appointment, then the certificate of proof or acknowledgment made by such the notary public shall be accompanied by the certificate of the county official before whom the notary qualifies for office or of a state officer authorized to issue certificates regarding notary commission status, stating that such the notary public was at the time his the certificate bears date an acting notary public of such that state, and that such the notary's genuine signature is set to his the certificate. The certificate of the official ~~herein provided for~~ shall be under his the official's hand and official seal.

(b) A proof or acknowledgement ~~which that~~ does not require a seal or stamp of the notary to be effective in the jurisdiction issuing the notary's commission shall include either (i) a statement by the notary within the proof or acknowledgement area of the instrument that the notary is not required to utilize a seal or stamp or (ii) a reference that purports to be the statute of the commissioning state which provides that no seal or stamp is required together with a statement that the notary is not required to utilize a seal or stamp. The register of deeds may rely upon this statement and is not responsible for confirming its validity or the authority of the person making it. A register of deeds ~~may~~ shall not refuse to accept a record for registration because a notarial seal or stamp is omitted from the proof or acknowledgement if ~~the provisions of~~ this subsection ~~have~~ has been complied with in the proof or acknowledgement. The acceptance of a record for registration under this subsection ~~shall give~~ gives rise to a presumption that the seal or stamp was not required to be affixed by the notary. This presumption is rebuttable and ~~shall apply~~ applies to all instruments whenever recorded. However, a court order finding the lack of a valid seal ~~shall~~ does not affect the rights of a person ~~who that~~ (i) records an interest in the real property described in the instrument before the finding of a lack of a valid seal and (ii) would otherwise have an enforceable interest in the real property." (1973, c. 1016; 2013-204, s. 1.12.)

Explanation: One way an instrument notarized by an out-of-state notary can avoid the requirement to include a certificate from an official of the other state is by including a statement that the notary's commission does not expire. This amendment is requested to require that this statement be part of the proof or acknowledgment or part of the notary's seal.

Amendment #4

SECTION #. G.S. 47-37.1 reads as rewritten:

"§ 47-37.1. Other forms of proof.

(a) The proof and acknowledgment forms set forth in this Article are not exclusive. Without regard to whether an instrument presented for registration was signed by an individual acting in his or her own right or by an individual acting in a representative or fiduciary capacity, a notarial certificate that complies with the provisions of Part 6 of Article 1 or Part 5 of Article 2 of Chapter 10B ~~shall be~~ is deemed a sufficient form of probate or acknowledgment for purposes of

★ this Chapter. Use of a notarial certificate that satisfies the requirements of Part 6 of Article 1 or Part 5 of Article 2 of Chapter 10B ~~shall not be grounds~~ is not a ground for a register of deeds to refuse to accept a record for registration.

(b) When an instrument presented for registration purports to be signed by an individual in a representative or fiduciary capacity, the acknowledgment or proof of that individual's signature ~~may~~ may do any of the following:

- (1) State that the individual signed the instrument in a representative or fiduciary capacity.
- (2) State that the individual who signed the instrument in a representative or fiduciary capacity had ~~due~~ authority to do so.
- (3) Identify the represented person or the fiduciary capacity.

(c) This section relates only to the form of proof or acknowledgment. The capacity and authority of the individual who signs an instrument presented for registration are governed by other provisions of law.

~~(d) This section applies to proofs and acknowledgments made before, on, or after December 1, 2005."~~ (2005-391, s. 9; 2006-59, s. 27.)

Explanation: This amendment is requested to "provide for any future forms legislatively approved for use by eNotaries. It is noted that there are currently discussions under way regarding Remote On-Line Notarization and any forms from those discussions could go where this revision specifies or in a new section which would need to be added to this section."

Part 5 of Article 2 of Chapter 10B is the Certificate Forms Part of the Electronic Notary Act. The Electronic Notary Act authorizes certain notarial acts to be performed electronically, but requires the signer of the electronic document to be in the presence of the electronic notary at the time of notarization. Under the current Part 5, notarial certificate forms under Part 6 of Article 1 of the Notaries Chapter are applicable for the purposes of the Electronic Notary Act.

Sections 4.1 and 4.2 of S.L. 2020-3 provided temporary authorization for emergency video notarization, which is not authorized under the Electronic Notary Act. As amended by Section 27 of S.L. 2020-74, those provisions expired March 1, 2021.

Background:

Chapter 10B.

Notaries.

Article 2.

Electronic Notary Act.

...

Part 3. Electronic Notarial Acts, Powers, and Limitations.

§ 10B-115. Types of electronic notarial acts.

The following types of notarial acts may be performed electronically:

- (1) Acknowledgments;
- (2) Jurats;
- (3) Verifications or proofs; and
- (4) Oaths or affirmations. (2005-391, s. 4.)

§ 10B-116. Prohibitions.

An electronic notarization shall not be performed if the signer of the electronic document:

- (1) Is not in the presence of the electronic notary at the time of notarization; and
- (2) Is not personally known to the notary or identified by the evidence in accordance with other provisions of this Chapter; or
- (3) For any reason set forth in G.S. 10B-20. (2005-391, s. 4.)

...

Part 5. Certificate Forms.

§ 10B-135. Validity of notarial certificates.

The provisions contained in Article 1, Part 6, of this Chapter, with regard to notarial certificate forms, are applicable for the purposes of this Article. (2005-391, s. 4.)

....

PART II. AMENDMENTS AFFECTING REAL PROPERTY

Amendment #5

SECTION #. G.S. 41-56 reads as rewritten:

"§ 41-56. Creation of tenancy by the entirety.

(a) Unless a contrary intention is expressed in the conveyance, a conveyance of real property, or any interest ~~therein, in real property,~~ to spouses vests title in them as tenants by the entirety when the conveyance is to one of the following:

- (1) A named man "and wife."
- (2) A named woman "and husband."
- (3) A named individual "and wife."
- (4) A named individual "and husband."
- (5) A named individual "and spouse."
- (6) Two named individuals, married to each other at the time of conveyance, whether or not identified in the conveyance as being (i) husband and wife, (ii) spouses, or (iii) married to each other.

★ (b) A conveyance by a grantor of real property, or any interest ~~therein, to an individual in real property, to the grantor~~ and his or her spouse vests the property in ~~the grantees~~ them as tenants by the entirety, unless a contrary intention is expressed in the conveyance. The joinder of a spouse in a conveyance made by the grantor under this subsection is not necessary, but the conveyance is subject to the provisions of G.S. 52-10 or ~~G.S. 52-11~~, G.S. 52-10.1, except acknowledgement of the spouse of the grantor is not necessary.

(c) When an individual owns an undivided interest in real property as a tenant in common with some individual or individuals other than his or her spouse and there occurs an actual partition of the property, a tenancy by the entirety may be created in the individual who owned the undivided interest and his or her spouse as follows:

- (1) In a division by crossdeed or deeds between or among the tenants in ~~common~~ if common, if the instrument contains both of the following:
 - a. The intent of the tenant in common to create a tenancy by the entirety with his or her spouse in this exchange of deeds is clearly stated in the granting clause of the deed or deeds to the tenant in common and his or her spouse.

b. The deed or deeds to the tenant in common and his or her spouse is signed by the tenant in common and is acknowledged before a certifying officer in accordance with G.S. 52-10.

(2) In a judicial proceeding for actual partition where both spouses have the right to become parties to the proceeding and to have their pleadings state that the intent of the tenant in common is to create a tenancy by the entirety with his or her spouse. The order of partition must provide that the real property apportioned to the tenant in common and his or her spouse shall be owned by them as tenants by the entirety.

(d) When spouses become co-owners of a mobile home, in the absence of a contrary intention appearing in the instrument of title, the spouses become tenants by the entirety with all the incidents of an estate by the entirety in real property, including the right of survivorship in the case of death of either spouse. For the purposes of this subsection, it is immaterial whether the property at any particular time ~~shall be~~ is classified for any purpose as either real or personal. Nothing in this subsection ~~shall be~~ is deemed to limit or prohibit any other type of ownership otherwise authorized by law. For the purposes of this subsection, the term "mobile home" means a portable manufactured housing unit designed for transportation on its own chassis and placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width. As used in this subsection, the term "mobile home" also means a double-wide mobile home ~~which that~~ is two or more portable manufactured housing units designed for transportation on their own ~~chassis, which chassis and that~~ connect on site for placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width." (1957, c. 598, s. 1; 1965, c. 878, s. 3; 1969, c. 748, s. 1; 1977, c. 375, ss. 9, 11; 1981, c. 507, s. 1; 1981 (Reg. Sess., 1982), c. 1245, s. 1; 1983, c. 449, ss. 1, 2; 1999-337, s. 11; 2020-23, s. 13; 2020-50, ss. 1(a)-(c), 3.1.)

Explanation: This amendment is requested to clarify that a conveyance from a grantor to the grantor and spouse creates a tenancy by the entireties.

This amendment would also correct the citation in G.S. 41-56(b) from G.S. 52-11. to G.S. 52-10.1, to align it with the citation in G.S. 39-13.3(e), addressing the same subject matter.

Background:

§ 39-13.3. Conveyances between husband and wife.

(a) A conveyance from a husband or wife to the other spouse of real property or any interest therein owned by the grantor alone vests such property or interest in the grantee.

(b) Recodified as G.S. 41-56(b) by Session Laws 2020-50, s. 1(b), effective June 30, 2020.

(c) Recodified as G.S. 41-63(4) by Session Laws 2020-50, s. 1(b), effective June 30, 2020.

(d) The joinder of the spouse of the grantor in any conveyance made by a husband or a wife pursuant to the foregoing provisions of this section is not necessary.

(e) Any conveyance authorized by this section is subject to the provisions of G.S. 52-10 or 52-10.1, except that acknowledgment by the spouse of the grantor is not necessary." (1957, c. 598, s. 1; 1965, c. 878, s. 3; 1977, c. 375, s. 9; 2020-50, s. 1(b).)

§ 52-10.1. Separation agreements.

Any married couple is hereby authorized to execute a separation agreement not inconsistent with public policy which shall be legal, valid, and binding in all respects; provided, that the separation agreement must be in writing and acknowledged by both parties before a certifying officer as defined in G.S. 52-10(b). Such certifying officer must not be a party to the contract. This section shall not apply to any judgment of the superior court or other State court of competent jurisdiction, which, by reason of its being consented to by a husband and wife, or their attorneys, may be construed to constitute a separation agreement between such husband and wife. (1965, c. 803; 1977, c. 375, s. 3.)

§ 52-11. Antenuptial contracts and torts.

The liability of a married person for any debts owing, or contracts made or damages incurred before marriage shall not be impaired or altered by such marriage. No person shall by marriage incur any liability for any debts owing, or contracts made, or for wrongs done by his or her spouse before the marriage. (1871-2, c. 193, ss. 13, 14; Code, ss. 1822, 1823; Rev., ss. 2101, 2106; C.S., s. 2517; 1965, c. 878, s. 1.)

Amendment #6

SECTION #. G.S. 41-75 reads as rewritten:

"§ 41-75. Inapplicability of Article.

This Article does not apply to any of the following:

- (1) Executors or trustees in their representative capacity.
- (2) Partnerships governed by Chapter 59 of the General Statutes.
- (3) Business entities.
- ★ (4) Accounts established under G.S. ~~42-2.1~~ 41-2.1 or G.S. ~~42-2.2~~ 41-2.2 to the extent inconsistent with the provisions of this Article.
- (5) Life estates. (2020-50, s. 2(a), (c).)

...."

Explanation: Section 2(c) of S.L. 2020-50 enacted this section and erroneously referenced G.S. 42-2.1 and 42-2.2, which do not exist. This amendment is requested to correct that error.

Background:

§ 41-2.1. Right of survivorship in bank deposits created by written agreement.

(a) A deposit account may be established with a banking institution in the names of two or more persons, payable to either or the survivor or survivors, with incidents as provided by subsection (b) of this section, when both or all parties have signed a written agreement, either on the signature card or by separate instrument, expressly providing for the right of survivorship.

(b) A deposit account established under subsection (a) of this section shall have the following incidents:

- (1) Either party to the agreement may add to or draw upon any part or all of the deposit account, and any withdrawal by or upon the order of either party shall be a complete discharge of the banking institution with respect to the sum withdrawn.
- (2) During the lifetime of both or all the parties, the deposit account shall be subject to their respective debts to the extent that each has contributed to the unwithdrawn account. In the event their respective contributions are not

determined, the unwithdrawn fund shall be deemed owned by both or all equally.

- (3) Upon the death of either or any party to the agreement, the survivor, or survivors, become the sole owner, or owners, of the entire unwithdrawn deposit, subject to the following claims listed below in subdivisions a. through e. upon that portion of the unwithdrawn deposit which would belong to the deceased had the unwithdrawn deposit been divided equally between both or among all the joint tenants at the time of the death of the deceased:
 - a. The allowance of the year's allowance to the surviving spouse of the deceased;
 - b. The funeral expenses of the deceased;
 - c. The cost of administering the estate of the deceased;
 - d. The claims of the creditors of the deceased; and
 - e. Governmental rights.
- (4) Upon the death of one of the joint tenants provided herein the banking institution in which said joint deposit is held shall pay to the legal representative of the deceased, or to the clerk of the superior court if the amount is less than two thousand dollars (\$2,000), the portion of the unwithdrawn deposit made subject to the claims and expenses as provided in subdivision (3) above, and may pay the remainder to the surviving joint tenant or joint tenants. Said legal representative shall hold the portion of said unwithdrawn deposit paid to him and not use the same for the payment of the claims and expenses as provided in subdivision (3) above unless and until all other personal assets of the estate have been exhausted, and shall then use so much thereof as may be necessary to pay said claims and expenses. Any part of said unwithdrawn deposit not used for the payment of said claims and expenses shall, upon the settlement of the estate, be paid to the surviving joint tenant or tenants.
- (c) This section shall be subject to the provisions of law applicable to transfers in fraud of creditors.
- (d) This section shall not be deemed exclusive; deposit accounts not conforming to this section, and other property jointly owned, shall be governed by other applicable provisions of the law.
- (e) As used in this section:
 - (1) "Banking institution" includes commercial banks, industrial banks, building and loan associations, savings and loan associations, and credit unions.
 - (2) "Deposit account" includes both time and demand deposits in commercial banks and industrial banks, installment shares, optional shares and fully paid share certificates in building and loan associations and savings and loan associations, and deposits and shares in credit unions.
 - (3) "Unwithdrawn deposit" shall be the amount in the deposit account held by the banking institution at the time of the death of the joint tenant; provided, however, that the banking institution shall not be held responsible for any amount properly paid out of said account prior to notice of such death.
- (f) This section does not repeal or modify any provisions of the law relating to estate or inheritance taxes.

(g) A deposit account under subsection (a) of this section may be established by a written agreement in substantially the following form:

"We, the undersigned, hereby agree that all sums deposited at any time, including sums deposited prior to this date, in the _____ (name of institution) in the joint account of the undersigned, shall be held by us as co-owners with the right of survivorship, regardless of whose funds are deposited in said account and regardless of who deposits the funds in said account. Either or any of us shall have the right to draw upon said account, without limit, and in case of the death of either or any of us the survivor or survivors shall be the sole owner or owners of the entire account. This agreement is governed by the provisions of § 41-2.1 of the General Statutes of North Carolina.

Witness our hands and seals, this _____ day of _____, _____.

_____ (Seal)"

(1959, c. 404; 1963, c. 779; 1969, c. 863; 1973, c. 840; 1975, c. 19, s. 14; 1977, c. 671, ss. 1, 2; 1998-69, s. 11; 1999-337, s. 9; 1999-456, s. 59.)

§ 41-2.2. Joint ownership of securities.

(a) In addition to other forms of ownership, securities may be owned by any parties as joint tenants with rights of survivorship, and not as tenants in common, in the manner provided in this section.

- (b) (1) A joint tenancy in securities as provided by this section shall exist when such securities indicate that they are owned with the right of survivorship, or otherwise clearly indicate an intention that upon the death of either party the interest of the decedent shall pass to the surviving party.
- (2) Such a joint tenancy may also exist when a broker or custodian holds the securities for the joint tenants and by book entry or otherwise indicates (i) that the securities are owned with the right of survivorship, or (ii) otherwise clearly indicates that upon the death of either party, the interest of the decedent shall pass to the surviving party. Money in the hands of such broker or custodian derived from the sale of, or held for the purpose of, such securities shall be treated in the same manner as such securities.

(c) Upon the death of a joint tenant his interest shall pass to the surviving joint tenant. The interest of the deceased joint tenant, even though it has passed to the surviving joint tenant, remains liable for the debts of the decedent in the same manner as the personal property included in his estate, and recovery thereof shall be made from the surviving joint tenant when the decedent's estate is insufficient to satisfy such debts.

(d) This section does not repeal or modify any provisions of the law relating to estate or inheritance taxes.

(e) As used in this section, "securities" has the same meaning as in G.S. 41-40(9) and includes "security account" as that term is defined in G.S. 41-40(10). (1967, c. 864, s. 1; 1969, c. 1115, s. 2; 1989 (Reg. Sess., 1990), c. 891, s. 2; 1998-69, s. 12; 1999-337, s. 10; 2005-411, s. 3.)

GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2019

SESSION LAW 2020-50
SENATE BILL 595

AN ACT TO MAKE CHANGES AND TECHNICAL CORRECTIONS TO THE GENERAL STATUTES CONCERNING REAL PROPERTY LAW, AS RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

...

PART II. CHANGES TO JOINT TENANCY

...

SECTION 2.(c) Article 6 of Chapter 41 of the General Statutes, as created by subsection (a) of this section and containing the sections recodified in subsection (b) of this section, reads as rewritten:

"Article 6.
"Joint Tenancy.

...

"§ 41-75. Inapplicability of Article.

This Article does not apply to any of the following:

- (1) Executors or trustees in their representative capacity.
- (2) Partnerships governed by Chapter 59 of the General Statutes.
- (3) Business entities.
- (4) Accounts established under G.S. 42-2.1 or G.S. 42-2.2 to the extent inconsistent with the provisions of this Article.
- (5) Life estates.

...

PART IV. EFFECTIVE DATE

SECTION 4. Except as otherwise provided, this act is effective when it becomes law. In the General Assembly read three times and ratified this the 19th day of June, 2020.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ David R. Lewis
Presiding Officer of the House of Representatives

s/ Roy Cooper
Governor

Approved 12:15 p.m. this 30th day of June, 2020

Amendment #7

SECTION #. G.S. 47-18 reads as rewritten:

"§ 47-18. Conveyances, contracts to convey, options and leases of land.

(a) No (i) conveyance of land, ~~or~~ (ii) contract to convey, ~~or~~ (iii) option to convey, ~~or~~ (iv) lease of land for more than three years ~~shall be~~ years, (v) right of first refusal, (vi) right of first offer, or (vii) option to purchase is valid to pass any property interest as against lien creditors or

→ purchasers for a valuable consideration from the donor, ~~bargainer~~ bargainor, or lessor but from the
 → time of its registration ~~thereof~~ in the county where the land lies, or if the land is located in more
 than one county, then in each county where any portion of the land lies to be effective as to the
 land in that county. Unless otherwise stated either on the registered instrument or on a separate
 registered instrument duly executed by the party whose priority interest is adversely affected, (i)
 → instruments registered in the office of the register of deeds ~~shall~~ have priority based on the order
 of registration as determined by the time of registration, and (ii) if instruments are registered
 → simultaneously, then the instruments ~~shall be~~ are presumed to have priority ~~as determined by~~ as
 → follows:

- (1) The earliest document number set forth on the registered instrument.
- (2) The sequential book and page number set forth on the registered instrument if no document number is set forth on the registered instrument.

The presumption created by this subsection is rebuttable.

→ (b) This section ~~shall~~ does not apply to contracts, ~~leases~~ leases, or deeds executed prior to
 → March 1, 1885, until January 1, 1886; and no purchase from any such donor, ~~bargainer~~ bargainor,
 → or lessor ~~shall avail or pass~~ avails or passes title as against any unregistered deed executed prior to
 → December 1, 1885, when the person holding or claiming under ~~such the~~ the unregistered deed ~~shall~~
 → ~~be~~ is in actual possession and enjoyment of ~~such the~~ the land, either in person or by ~~his~~ the person's
 → tenant, at the time of the execution of ~~such the~~ the second deed, or when the person claiming under or
 → taking ~~such the~~ the second deed had at the time of taking or purchasing under ~~such the~~ the deed actual or
 → constructive notice of ~~such the~~ the unregistered deed, or the claim of the person holding or claiming
 → ~~thereunder~~ under the deed. " (Code, s. 1245; 1885, c. 147, s. 1; Rev., s. 980; C.S., s. 3309; 1959,
 c. 90; 1975, c. 507; 2003-219, s. 2; 2005-212, s. 2.)

Explanation: This amendment is requested "in response to *Anderson v. Walker* (N.C. App., 2018)." In that case, the defendants appealed a trial court ruling that honored the plaintiff's unrecorded right of first refusal where the defendants had a subsequent recorded option agreement to purchase the property. That Court of Appeals affirmed the trial court's ruling on the grounds that (1) of the property interests that do not pass until registered under G.S. 47-18, a right of first refusal is not included, and (2) under case law, the registration statute only protects an "innocent purchaser" against an unrecorded interest. In this case, the court found that the defendants were not innocent because they had actual knowledge of the unrecorded right of first refusal at the time they entered into their option to purchase agreement.

Amendment #8

SECTION #. G.S. 93A-12 reads as rewritten:

"§ 93A-12. Disputed monies.

★ (a) A real estate broker licensed under this ~~Chapter~~ Chapter, a title insurance company or
 ★ title insurance agent licensed to conduct business in this State, or an attorney licensed to practice
 law in this State may deposit with the clerk of court in accordance with this section monies, other
 than a residential security deposit, the ownership of which are in dispute and that the real estate
 broker or attorney received while acting in a fiduciary capacity.

★ (b) The disputed monies shall be deposited with the clerk of court in the county in which
 ★ the property for which the disputed monies are being held is located. At the time of depositing the
 ★ disputed monies, the real estate ~~broker~~ broker, title insurance company, title insurance agent, or
 → attorney shall certify to the clerk of court that the persons ~~who are~~ claiming ownership of the

disputed monies have been notified in accordance with subsection (c) of this section that the disputed monies are to be deposited with the clerk of court and that the persons may initiate a special proceeding with the clerk of court to recover the disputed monies.

→ (c) Notice to the persons ~~who are~~ claiming ownership to the disputed monies required under subsection (b) of this section shall be provided by delivering a copy of the notice to the person or by mailing it to the person by first-class mail, postpaid, properly addressed to the person at the person's last known address.

★ (d) A real estate ~~broker~~ broker, title insurance company, title insurance agent, or attorney shall not deposit disputed monies with the clerk of court until 90 days following notification of the persons claiming ownership of the disputed monies.

(e) Upon the filing of a special proceeding to recover the disputed monies, the clerk shall determine the rightful ownership of the monies and distribute the disputed monies accordingly. If no special proceeding is filed with the clerk of court within one year of the disputed monies being deposited with the clerk of court, the disputed monies shall be deemed unclaimed and shall be delivered by the clerk of court to the State Treasurer in accordance with the provisions of Article 4 of Chapter 116B of the General Statutes."

Explanation: This amendment is requested to "allow title insurance companies and agents to interplead entrusted monies pursuant to the existing statute."

Amendment #9

SECTION #. G.S. 105-228.29 reads as rewritten:
"§ 105-228.29. Exemptions.

This Article does not apply to any of the following transfers of an interest in real property:

- (1) By operation of law.
- (2) By lease for a term of years.
- (3) By or pursuant to the provisions of a will.
- (4) By intestacy.
- (5) By gift.
- (6) If no consideration in property or money is due or paid by the transferee to the transferor.
- (7) By merger, conversion, or consolidation.
- (8) By an instrument securing indebtedness.
- ★ (9) By an instrument between spouses or former spouses incident to (i) an equitable distribution of marital property and divisible property under G.S. 50-20 or (ii) a property settlement pursuant to G.S. 52-10 or G.S. 52-10.1."

Explanation: G.S. 105-228.29 is within Article 8E (Excise Tax on Conveyances) of Chapter 105 (Taxation). This amendment is requested to "clarify that deeds done in accordance with equitable distributions are exempt from excise taxes. This resolves questions that arise from 41 NCAG 237 (1971)."

A 1971 Attorney General opinion concluded that property conveyed from husband to wife as part of a settlement agreement is subject to excise tax under G.S. 105-228.28 and G.S. 105-228.29 because it is not conveyed as a gift without consideration. Both of these statutes were later amended in 1999, but do not appear to have changed in this substantive regard.

Background:

§ 52-10. Contracts between husband and wife generally; releases.

(a) Contracts between husband and wife not inconsistent with public policy are valid, and any persons of full age about to be married and married persons may, with or without a valuable consideration, release and quitclaim such rights which they might respectively acquire or may have acquired by marriage in the property of each other; and such releases may be pleaded in bar of any action or proceeding for the recovery of the rights and estate so released. No contract or release between husband and wife made during their coverture shall be valid to affect or change any part of the real estate of either spouse, or the accruing income thereof for a longer time than three years next ensuing the making of such contract or release, unless it is in writing and is acknowledged by both parties before a certifying officer.

(a1) A contract between a husband and wife made, with or without a valuable consideration, during a period of separation to waive, release, or establish rights and obligations to post separation support, alimony, or spousal support is valid and not inconsistent with public policy. A provision waiving, releasing, or establishing rights and obligations to post separation support, alimony, or spousal support shall remain valid following a period of reconciliation and subsequent separation, if the contract satisfies all of the following requirements:

- (1) The contract is in writing.
- (2) The provision waiving the rights or obligations is clearly stated in the contract.
- (3) The contract was acknowledged by both parties before a certifying officer.

A release made pursuant to this subsection may be pleaded in bar of any action or proceeding for the recovery of the rights released.

(b) Such certifying officer shall be a notary public, or a justice, judge, magistrate, clerk, assistant clerk or deputy clerk of the General Court of Justice, or the equivalent or corresponding officers of the state, territory or foreign country where the acknowledgment is made. Such officer must not be a party to the contract.

(c) This section shall not apply to any judgment of the superior court or other State court of competent jurisdiction, which, by reason of its being consented to by a husband and wife, or their attorneys, may be construed to constitute a contract or release between such husband and wife. (1871-2, c. 193, s. 28; Code, s. 1836; Rev., s. 2108; C.S., s. 2516; 1959, c. 879, s. 12; 1965, c. 878, s. 1; 1977, c. 375, s. 2; 2013-140, s. 1.)

§ 52-10.1. Separation agreements.

Any married couple is hereby authorized to execute a separation agreement not inconsistent with public policy which shall be legal, valid, and binding in all respects; provided, that the separation agreement must be in writing and acknowledged by both parties before a certifying officer as defined in G.S. 52-10(b). Such certifying officer must not be a party to the contract. This section shall not apply to any judgment of the superior court or other State court of competent jurisdiction, which, by reason of its being consented to by a husband and wife, or their attorneys, may be construed to constitute a separation agreement between such husband and wife. (1965, c. 803; 1977, c. 375, s. 3.)

Article 8E.

Excise Tax on Conveyances.

§ 105-228.28. Scope.

This Article applies to every person conveying an interest in real estate located in North Carolina other than a governmental unit or an instrumentality of a governmental unit. (1967, c. 986, s. 1; 1999-28, s. 1.)

§ 105-228.29. Exemptions.

This Article does not apply to any of the following transfers of an interest in real property:

- (1) By operation of law.
- (2) By lease for a term of years.
- (3) By or pursuant to the provisions of a will.
- (4) By intestacy.
- (5) By gift.
- (6) If no consideration in property or money is due or paid by the transferee to the transferor.
- (7) By merger, conversion, or consolidation.
- (8) By an instrument securing indebtedness. (1967, c. 986, s. 1; 1999-28, s. 1; 1999-369, s. 5.10(a)-(c).)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 1999-28
HOUSE BILL 56

AN ACT TO ELIMINATE THE USE OF STAMPS TO INDICATE WHETHER THE EXCISE TAX ON CONVEYANCES HAS BEEN PAID AND TO MAKE THE PENALTIES THAT APPLY TO THIS TAX THE SAME AS FOR OTHER TAXES.

The General Assembly of North Carolina enacts:

Section 1. Article 8E of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 8E.

"Excise ~~Stamp~~ Tax on Conveyances.

"§ 105-228.28. ~~To whom this Article shall apply.~~ Scope.

~~The provisions of this Article shall apply to every person, firm, corporation, association, society or organization.~~ This Article applies to every person conveying an interest in real estate located in North Carolina other than a governmental unit and instrumentalities thereof. or an instrumentality of a governmental unit.

"§ 105-228.29. ~~Conveyances excluded.~~ Exemptions.

~~The provisions of this Article shall not apply to transfers of an interest in real estate by operation of law, by lease for a term of years, by or pursuant to the provisions of a will, by intestacy, by gift, by merger or consolidation, or by instruments securing indebtedness, or any other transfer where no consideration in property or money is due or paid by the transferee to transferor.~~ This Article does not apply to any of the following transfers of an interest in real property:

- (1) By operation of law.
- (2) By lease for a term of years.
- (3) By or pursuant to the provisions of a will.

- (4) By intestacy.
- (5) By gift.
- (6) If no consideration in property or money is due or paid by the transferee to the transferor.
- (7) By merger or consolidation.
- (8) By an instrument securing indebtedness.

...

Section 3. Section 1 of this act becomes effective July 1, 2000. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of April, 1999.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 2:15 p.m. this 22nd day of April, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 1999-369
SENATE BILL 835

AN ACT TO REVISE THE LAW GOVERNING MERGERS, CONSOLIDATIONS, AND CONVERSIONS AMONG BUSINESS CORPORATIONS, NONPROFIT CORPORATIONS, AND UNINCORPORATED ENTITIES, INCLUDING LIMITED LIABILITY COMPANIES AND PARTNERSHIPS, FOR THE PURPOSE OF CONFORMING THE LAWS WITH THOSE OF OTHER STATES AND MODERN BUSINESS PRACTICES; TO ALLOW CONVERSION OF A MUTUAL INSURANCE COMPANY TO A STOCK INSURANCE COMPANY; AND TO PERMIT HOMEOWNER ASSOCIATIONS TO DISTRIBUTE SURPLUS FUNDS.

The General Assembly of North Carolina enacts:

...

PART V. CONFORMING CHANGES.

Section 5.10.(a) G.S. 105-228.29 reads as rewritten:

"§ 105-228.29. Conveyances excluded.

The provisions of this Article shall not apply to transfers of an interest in real estate by operation of law, by lease for a term of years, by or pursuant to the provisions of a will, by

intestacy, by gift, by ~~merger~~ merger, conversion, or consolidation, or by instruments securing indebtedness, or any other transfer where no consideration in property or money is due or paid by the transferee to transferor."

Section 5.10.(b) Subsection (a) of this section expires July 1, 2000.

Section 5.10.(c) Effective July 1, 2000, G.S. 105-228.29(7) as enacted by Section 1 of S.L. 1999-28 reads as rewritten:

"(7) By ~~merger~~ merger, conversion, or consolidation."

...

PART VIII. EFFECTIVE DATE.

Section 8. Section 6 of this act becomes effective October 1, 1999. The remainder of this act becomes effective December 15, 1999, and applies to mergers, consolidations, or conversions effective on or after that date.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 8:50 p.m. this 4th day of August, 1999

Amendment #10:

SECTION #. Section 5 of S.L. 2017-110 reads as rewritten:

★ **"SECTION 5.** This act becomes effective August 31, 2018, and applies to ~~curative affidavits~~ instruments filed on or after that date."

Explanation: Section 2 of S.L. 2017-110 enacts a curative affidavit mechanism for correcting descriptive errors in recorded instruments of title. Section 3 of S.L. 2017-110 creates a seven-year curative provision, providing that if a material defect is not corrected within seven years, the instrument vests title as stated. The effective date for S.L. 2017-110 specifies that it applies to curative affidavits filed on or after the effective date, which is too narrow to include the seven-year curative statute. This amendment is requested to correct that by using the broader term "instruments" instead of "curative affidavits" in the applicability clause.

Background:

GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2017 SESSION LAW 2017-110 HOUSE BILL 584

AN ACT TO CLARIFY THE PROCESS FOR CORRECTING NONMATERIAL ERRORS IN RECORDED INSTRUMENTS OF TITLE, TO CREATE A CURATIVE PROCEDURE FOR OBVIOUS DESCRIPTION ERRORS IN DOCUMENTS OF TITLE, AND TO CREATE A SEVEN-YEAR CURATIVE PROVISION FOR CERTAIN DEFECTS IN RECORDED INSTRUMENTS OF TITLE.

The General Assembly of North Carolina enacts:

...

SECTION 2. Article 2 of Chapter 47 of the General Statutes is amended by adding a new section to read:

"§ 47-36.2. Cure of obvious description errors in recorded instruments.

(a) The following definitions apply to this section, unless the context requires a different meaning:

- (1) Authorized attorney. – An individual licensed to practice law under Chapter 84 of the General Statutes, who is one of the following:
 - a. The attorney who drafted the instrument containing the obvious description error to be corrected.
 - b. Any attorney for a party to the transaction for which the instrument containing the obvious description error was recorded, including, for example, but not limited to, the attorney for (i) the grantor or grantee in a deed; (ii) the mortgagor or mortgagee in a mortgage; (iii) the grantor or trustor in a deed of trust; (iv) the trustee or duly appointed substitute trustee in a deed of trust; (v) the beneficiary of record in a deed of trust or the assignee of record of the beneficiary's interest; (vi) the assignor or assignee in an assignment of leases, rents, or profits; or (vii) any party to an instrument affecting title to real property.
 - c. An attorney retained or authorized by either a title insurance company or title insurance agent that either (i) has issued a policy of title insurance covering the subject property in the transaction in which the error occurred or in any subsequent transaction or (ii) proposes to issue a policy of title insurance in reliance on a curative affidavit recorded or to be recorded in accordance with the provisions of this section.
- (2) Curative affidavit. – An affidavit executed by an authorized attorney to correct an obvious description error.
- (3) Notice of intent. – A notice issued by an authorized attorney of the authorized attorney's intent to sign and record a curative affidavit.
- (4) Obvious description error. – An error in the legal description of real property that is contained in an instrument affecting title to real property recorded in the office of the register of deeds in the county in which the real property or any part or parts thereof is located that is evidenced by any of the following:
 - a. One or more of the following, as stated in the instrument, are inconsistent in that one or more identify the property incorrectly, and the error is made apparent by reference to other information contained in the instrument, contained in an attachment to the instrument, or contained in another instrument in the chain of title for the subject parcel, including a recorded plat:

1. The legal description of the property.
 2. The physical address of the property.
 3. The tax map identification number of the property.
 4. A plat reference.
 5. A prior deed reference.
- b. The legal description of the real property in the instrument contains one or more errors transcribing courses and distances, including, for example, the omission of one or more lines of courses and distances, the omission of angles and compass directions, or the reversal of courses.
 - c. The instrument contains an error in a lot or unit number or designation, and the lot or unit described is not owned by the grantor, trustor, mortgagor, or assignor at the time the instrument is executed.
 - d. The instrument omits an exhibit, attachment, or other descriptive information intended to supply the legal description of the subject property, and the correct legal description may be determined by reference to other information contained in the instrument, including, but not limited to, one or more of the items described in sub-subdivision a. of this subdivision.

The term "obvious description error" does not include and shall not apply to (i) missing or improper signatures or acknowledgements; (ii) any designation of the type of ownership interest or right of survivorship; or (iii) any error in the legal description that operates to convey any interest in real property that the grantor, trustor, mortgagor, or assignor owned at the time of conveyance but did not intend to convey.

- (5) Recorded plat. – A plat that has been prepared by a professional land surveyor licensed pursuant to Chapter 89C of the General Statutes and has been recorded with the register of deeds in the county where the property is situated.
- (6) Recording data. – The book and page number or document number that indicates where an instrument is recorded in the office of the register of deeds.
- (7) Title insurance agent. – A person or entity licensed by the Commissioner of Insurance and contractually authorized by one or more title insurance companies to issue commitments and policies on behalf of said title insurance company and that has issued or proposes to issue a policy of title insurance covering real property described in a recorded instrument needing correction.
- (8) Title insurance company. – A company certified pursuant to Article 26 of Chapter 58 of the General Statutes that has issued or proposes to issue a policy of title insurance covering real property described in a recorded instrument needing correction.

(b) Notwithstanding G.S. 47-14 and G.S. 47-17, obvious description errors in a recorded instrument affecting title to real property may be cured by recording a curative affidavit with the register of deeds in every county where the real property is situated.

(c) Prior to recording a curative affidavit as described in subsection (b) of this section, the authorized attorney seeking to record the affidavit shall serve a notice of intent and a copy of the unsigned proposed curative affidavit on the persons identified in this subsection. Service of the notice of intent and copy of the unsigned proposed curative affidavit shall be made in any manner prescribed for the service of a summons in accordance with Rule 4(j) or Rule 4(j5) of the North

Carolina Rules of Civil Procedure. The persons entitled to service of the notice of intent and a copy of the unsigned proposed curative affidavit pursuant to this subsection are as follows:

- (1) All parties to the instrument that is the subject of the curative affidavit. In the case of a deed of trust, the parties to the instrument shall include the grantor or trustor named in the deed of trust, the beneficiary of record, and any assignee of the beneficiary known to the party filing the curative affidavit or its authorized attorney, but need not include the trustee named in the deed of trust or any substitute trustee.
- (2) Any current record mortgagee, record beneficiary, record assignee, or record secured party in any mortgage, deed of trust, assignment of leases, rents or profits, UCC fixture filing, or other recorded instrument of title that may be adversely affected by the recording of the curative affidavit. For the purposes of this subdivision, "instruments of title" means any instrument, recorded after the date of recordation of the instrument that is the subject of the curative affidavit, that affects title or constitutes the chain of title to real property, including, but not limited to, all deeds, wills, estate documents evidencing transfer of title, plats, surveys, easements, rights-of-way, outstanding mortgages and deeds of trust, judicial orders or decrees, and documents evidencing intestate succession.
- (3) The current record owner of the real property.
- (4) The attorney who prepared the instrument that is the subject of the curative affidavit, if known.
- (5) Any title insurance company, if applicable and known, and title insurance agent, if applicable and known, that (i) issued a policy of title insurance covering the subject property in the transaction in which the error occurred or in any subsequent transaction or (ii) proposes to issue a policy of title insurance in reliance on the proposed curative affidavit.
- (6) The current record owners of all adjoining properties that may be adversely affected by the recording of the curative affidavit, the current record holders of any mineral or timber rights that may be adversely affected by the recording of the curative affidavit, and the record holders of any easement rights that may be adversely affected by the recording of the curative affidavit.

(d) Each person served with the notice of intent and a copy of the unsigned proposed curative affidavit described in subsection (c) of this section that wishes to object to the recordation of the proposed curative affidavit or dispute the facts recited in the proposed curative affidavit must do so in a writing sent in any manner provided for under subsection (e) of this section to the authorized attorney within 30 days after the service of the documents upon that person. The authorized attorney may sign and record the proposed curative affidavit at any time after more than 45 days have elapsed since the last person to be served was served with the notice of intent and a copy of the unsigned proposed curative affidavit. However, the authorized attorney may not record the proposed curative affidavit if, at any time before recording the proposed curative affidavit, the authorized attorney receives a written objection to the recordation of the proposed curative affidavit or a written statement disputing the facts recited in the proposed curative affidavit from any person served with the notice of intent and a copy of the unsigned proposed curative affidavit.

(e) In complying with any requirement for objecting to the recordation of the proposed curative affidavit or disputing the facts recited in the proposed curative affidavit pursuant to this

section, the objection or document disputing the facts must be addressed to the authorized attorney and shall be delivered by at least one of the following methods:

- (1) Delivering a copy to the authorized attorney by handing it to the authorized attorney, or by leaving it at the authorized attorney's office with a partner or employee of the authorized attorney.
 - (2) Mailing a copy to the authorized attorney's mailing address provided in the notice of intent.
 - (3) Sending a copy by facsimile to the authorized attorney's facsimile number provided in the notice of intent, as evidenced by a facsimile receipt confirmation.
 - (4) Electronic mail addressed to the authorized attorney's e-mail address provided in the notice of intent.
 - (5) Depositing a copy prepaid with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) addressed to the authorized attorney's mailing address provided in the notice of intent.
- (f) An affidavit is sufficient as a curative affidavit if it does all of the following:
- (1) Contains a statement that the curative affidavit should be indexed as a "subsequent instrument" pursuant to G.S. 161-14.1.
 - (2) Contains a statement that the curative affidavit is recorded pursuant to this section to correct an obvious description error contained in a previously recorded instrument.
 - (3) Contains a statement that the affiant is an attorney licensed to practice law in North Carolina and is an authorized attorney pursuant to subdivision (1) of subsection (a) of this section.
 - (4) Identifies each instrument subject to the curative affidavit by stating the title of the instrument, the parties to the instrument, and the recording data for the instrument.
 - (5) Identifies the obvious description error contained in each instrument subject to the curative affidavit.
 - (6) Corrects the obvious description error by stating the correct property description.
 - (7) Contains a statement that the affiant served a copy of the notice of intent required by subsection (c) of this section and a copy of the unsigned proposed curative affidavit on all persons entitled to notice pursuant to subsection (c) of this section and that service on each such person was properly effected in a manner prescribed for the service of a summons in accordance with Rule 4(j) or Rule 4(j5) of the North Carolina Rules of Civil Procedure.
 - (8) Contains a statement that more than 45 days have elapsed since the last person to be served was served, and that before signing and recording the curative affidavit, the affiant did not receive from any person so served any written objection to the recordation of the curative affidavit or any written statement disputing the facts recited in the curative affidavit.
 - (9) Provides the name, telephone number, e-mail address (if available), facsimile number (if available), and mailing address of the affiant.

- (10) Is signed and sworn to or affirmed by the authorized attorney as affiant before a notary public, with an appropriate jurat completed by the notary public that conforms to the requirements of Chapter 10B of the General Statutes.

(g) A curative affidavit recorded pursuant to this section in the office of the register of deeds in the county where the real property is located shall operate as a correction of the instrument being corrected that relates back to, and is effective as of, the date the instrument being corrected was originally recorded in the office of the register of deeds, with the same effect as if the description of the property was correct when the instrument was first recorded, and all parties to the instrument being corrected shall be bound by the terms contained in the recorded curative affidavit and the instrument being corrected.

(h) Upon payment of the appropriate recordation fee, the register of deeds shall accept a curative affidavit for recording unless the curative affidavit (i) is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law, (ii) is not signed by the affiant and sworn to or affirmed as required by law for an affidavit or affirmation, or (iii) lacks a proper jurat. A copy of the previously recorded instrument to which the curative affidavit applies may be attached to or recorded with the curative affidavit and need not be a certified copy. The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any curative affidavit or (ii) the authority of the person executing any curative affidavit to do so. The register of deeds shall index the curative affidavit in the name of the affiant and in the names of the various parties, other than a trustee or substitute trustee named in a deed of trust, to each instrument being corrected as both grantees and grantors, irrespective of their designation in the instrument being corrected. The costs associated with the recording of a curative affidavit pursuant to this section shall be paid by the party submitting the affidavit to the register of deeds.

(i) A curative affidavit recorded in compliance with this section shall be prima facie evidence of the facts stated therein. Any person who wrongfully or erroneously records a curative affidavit is liable for actual damages sustained by any party as a result of the recordation, including reasonable attorneys' fees and costs.

(j) The remedies prescribed by this section are not exclusive and do not abrogate any rights or remedies otherwise available under the laws of this State, including any rights or remedies under G.S. 47-36.1.

(k) No particular phrasing is required for a curative affidavit. A curative affidavit in substantially the following form, when properly completed, is sufficient to satisfy the requirements of subsection (f) of this section:

"Curative Affidavit"

This curative affidavit should be indexed as a "subsequent instrument" pursuant to G.S. 161-14.1.

I, _____, certify as follows:

1. This curative affidavit is recorded pursuant to G.S. 47-36.2 to correct an obvious description error contained in a previously recorded instrument.
2. I am an attorney licensed to practice law in North Carolina. I am an "authorized attorney" as defined in G.S. 47-36.2(a)(1).
3. The instrument or instruments containing an obvious description error requiring correction are identified as follows:

Insert here the following information regarding each instrument to be corrected: the title of the instrument, the parties to the instrument, and the recording data for the instrument.

4. The obvious description error contained in the instrument(s) to be corrected is identified or described as follows:
Insert here the erroneous description that requires correction.
5. The erroneous property description is corrected to read as follows:
Insert here the correct description of the real property.
6. I have served a copy of a notice of my intent to sign and record this curative affidavit and a copy of this curative affidavit, unsigned, on all persons entitled to notice pursuant to G.S. 47-36.2(c). Service on each such person was properly effected in a manner prescribed for the service of a summons in accordance with Rule 4(j) or Rule 4(j5) of the North Carolina Rules of Civil Procedure, and more than 45 days have elapsed since the last person to be served was served. By signing and recording this affidavit I certify that I did not receive from any person so served any written objection to the recordation of this curative affidavit or any written statement disputing the facts recited in this curative affidavit.
7. My contact information is as follows:
Insert here the affiant's name, telephone number, email address (if available), facsimile number (if available), and mailing address.

Date: _____

Signature of Affiant

COUNTY OF _____, STATE OF _____

The foregoing curative affidavit was sworn to or affirmed and subscribed before me this day by
_____.

Date: _____

Signature of Notary Public

Official Seal

_____, Notary Public
Print or Type Notary's Name

My commission expires: _____ "

(I) The form of the notice of intent to be given as described in subsection (c) of this section shall be substantially as follows (including capitalization and bold typeface as shown):

"NOTICE OF INTENT TO CORRECT AN OBVIOUS DESCRIPTION ERROR

This is an important legal document that requires your immediate attention. Your property rights may be affected, and you may need to respond to this notice in writing.

I am an attorney licensed to practice law in North Carolina. My contact information is as follows:
Insert the name, telephone number, email address (if available), facsimile number (if available), and mailing address of the authorized attorney issuing the notice.

I have discovered or have been advised of an error in the description of real property contained in one or more instruments recorded as part of a real estate-related transaction. A copy of a proposed Curative Affidavit accompanies this notice. The proposed Curative Affidavit identifies the previously recorded instrument or instruments that contain the description errors that I plan to correct, the description error or errors that require correction, and the correct description of the real property. If I sign and record the proposed Curative Affidavit, it will have the legal effect of correcting the erroneous property description in the listed instrument or instruments that contain the description errors.

Real property you own may be affected if I correct the erroneous description of the real property in the instrument or instruments identified in the proposed Curative Affidavit. You should consult with your attorney and your title insurance company, if known, promptly to determine whether and the extent to which my correction of the legal description in the instrument or instruments that need to be corrected will impact your property or property rights.

IF YOU WISH TO OBJECT TO MY SIGNING AND RECORDING THE PROPOSED CURATIVE AFFIDAVIT OR DISPUTE THE FACTS RECITED IN THE PROPOSED CURATIVE AFFIDAVIT, YOU MUST DO SO IN A WRITING SENT OR DELIVERED TO ME WITHIN 30 DAYS AFTER THE DATE YOU WERE SERVED WITH THIS NOTICE AND THE PROPOSED CURATIVE AFFIDAVIT.

Your writing must be sent or delivered to me by one of the following methods:

- (1) Delivering a copy by handing it to me or by leaving it at my office with a partner or employee of mine.
- (2) Mailing a copy to me at the mailing address provided in this notice of intent.
- (3) Sending a copy by facsimile to my facsimile number, if provided in this notice of intent, as evidenced by a facsimile receipt confirmation.
- (4) Electronic mail sent to my e-mail address, if provided in this notice of intent.
- (5) Depositing a copy prepaid with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) addressed to the mailing address provided in this notice of intent.

I am not permitted to sign or record the Curative Affidavit if, at any time before I actually sign and record it, I receive a written objection to my signing and recording the Curative Affidavit or a written statement disputing the facts contained in the Curative Affidavit from any person served with this notice and a copy of the unsigned proposed Curative Affidavit. However, assuming I do not receive any such objection or statement disputing the facts, Section 47-36.2 of the North Carolina General Statutes permits me to sign and record the Curative Affidavit at any time after more than 45 days have elapsed since the last person to be served was served with this notice and a copy of the unsigned proposed Curative Affidavit, and I intend to do so.

If you object to my signing and recording the Curative Affidavit or dispute the facts recited in the proposed Curative Affidavit, you need to send or deliver your written objection or written statement disputing the facts recited in the proposed Curative Affidavit to me promptly using one of the methods described above. While I encourage you to call me if you have questions, your telephone call will not be sufficient – you must write to me if you dispute the facts recited in the proposed Curative Affidavit or object to my signing and recording the Curative Affidavit.

Date: _____

Signature of authorized attorney"

(m) Nothing in this section requires that a curative affidavit be attached to an original or certified copy of a previously recorded instrument that is unchanged but rerecorded. Nothing in this section requires that a curative affidavit be attached to a copy of a previously recorded instrument that includes identified corrections or an original execution by a party or parties of the corrected instrument after the original recording with proof or acknowledgment of their execution of the correction of the instrument.

(n) The period prescribed for the commencement of an action contesting the validity or efficacy of a curative affidavit recorded under this statute shall be one year from the date of recordation of the curative affidavit. This subsection does not apply to an action for damages sustained by any party as a result of the wrongful or erroneous recordation of a curative affidavit as provided in subsection (i) of this section."

SECTION 3. Article 4 of Chapter 47 of the General Statutes is amended by adding a new section to read:

"§ 47-108.28. Seven-year curative statute.

(a) An instrument conveying or purporting to convey an interest in real property that contains a defect, irregularity, or omission shall be deemed effective to vest title as stated therein and to the same extent as though the instrument had not contained the material defect, irregularity, or omission, if both of the following conditions are met:

- (1) The instrument is recorded by the register of deeds in the county or counties where the property is situated.
- (2) The material defect, irregularity, or omission is not corrected within seven years after the instrument was recorded.

The proper recordation and indexing of a curative instrument or a notice of lis pendens shall toll the seven-year curative period.

(b) For the purposes of this section only, an instrument shall be deemed to contain a "defect, irregularity, or omission" when any of the following conditions are met:

- (1) The recorded instrument lacks any of the following:
 - a. A properly executed form of acknowledgment as provided under Article 3 of this Chapter or Chapter 10B of the General Statutes.
 - b. The proper recital of consideration paid.
 - c. The residence of a party.
 - d. The address of the property
 - e. The address of a party.
 - f. The date of the instrument.
 - g. The date of any instrument or obligation secured by the instrument.
 - h. The proper affixation of seal by any person authorized to execute an instrument by virtue of an office or appointment held by the grantor that is required to affix the seal to the recorded instrument under applicable law.
- (2) The name of a grantor, trustor, mortgagor, assignor, borrower, or other person with an interest in the property does not appear in any part of the instrument, but the person executed the instrument without limitation or qualification. The person who executed the instrument without limitation or qualification shall be deemed to have conveyed or encumbered (as applicable) any interest or right

such person then had in the property conveyed or encumbered by the terms of the instrument.

(c) Nothing in this section is intended to modify any provisions of law pertaining to the competency or infancy of the grantor or the provisions of Chapter 22 of the General Statutes or to limit any remedies available under the laws of this State."

...

SECTION 5. This act becomes effective August 31, 2018, and applies to curative affidavits filed on or after that date.

In the General Assembly read three times and ratified this the 29th day of June, 2017.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 6:57 p.m. this 12th day of July, 2017